SUMMARY DESCRIPTION OF S. 528

(THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983)

RELATING TO

TAX CREDITS FOR TUITION EXPENSES

SCHEDULED FOR A MARKUP

ON

MAY 17, 1983

BY THE

SENATE COMMITTEE ON FINANCE

Prepared by the Staff

of the

Joint Committee on Taxation

May 13, 1983

JCX-12-83

J862-58
S362-41

CONTENTS

	PAGE
INTRODUCTION	1
I. PRESENT LAW	2
II. DESCRIPTION OF S. 528	4
III. DIFFERENCES BETWEEN S. 528 AND H.R. 1635 (97TH CONG., AS REPORTED BY THE SENATE COMMITTEE ON FINANCE)	8

INTRODUCTION

This document provides a description of the provisions of S. 528, the Educational Opportunity and Equity Act of 1983 (introduced by Senators Dole, Packwood, Moynihan, Roth, and D'Amato). S. 528, which has been proposed by the Administration, would provide a nonrefundable tax credit for certain tuition paid to private elementary and secondary schools that have racially nondiscriminatory policies.

The Senate Committee on Finance has scheduled a markup of S. 528 for May 17, 1983. The Committee on Finance held a public hearing on the bill on April 28, 1983.[1]

In the 97th Congress, the Senate Committee on Finance reported H.R. 1635, with amendments, a bill that was very similar to S. 528.[2]

The first part of this document is a summary description of present law. This is followed, in the second part, by a summary description of S. 528. The third part is a brief description of the differences between S. 528 and H.R. 1635 (97th Cong.).

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[1] For a more detailed description of the provisions of S. 528, see "Description of S. 528 (the Educational Opportunity and Equity Act of 1983) Relating to Tax Credit for Tuition Expenses" (JCS 8-83, April 26, 1983).

[2] See, S. Rep. No. 97-576, 97th Cong., 2d. Sess (1982).

I. PRESENT LAW

Tax Benefits for Educational Expenses

Present law does not provide any tax credit or deduction for personal educational expenses. However, in certain cases, taxpayers are entitled to a personal exemption for a dependent, which they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income certain amounts received as scholarships and fellowships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" educational expenses may be deducted.

Other Tax Provisions of Benefit to Education

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts, which may comprise a large portion of a student's educational expenses, and the charitable contribution deduction, which allows a deduction for charitable contributions (not tuition payments) to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds and the deduction for State and local taxes, indirectly assist publicly supported educational institutions by easing the financial burden of State and local governments.[3]

Effect of Racial Discrimination on the Tax-Exempt Status of Private Schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure in 1971 and 1972, respectively, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines and recordkeeping requirements for determining whether private schools have adequately publicized their racially nondiscriminatory

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[3]The Congressional Research Service has estimated that school districts benefit from roughly 58 percent of the subsidy associated with the deductibility of property taxes on owner-occupied homes (i.e., $5,083 million of the $8,765 million projected revenue loss for FY 83); 29 percent of the subsidy associated with the deductibility of all other nonbusiness State and local taxes (i.e., $5,817 million of the $20,060 million projected revenue loss for FY 83); 35 percent of the subsidy associated with the exclusion of interest paid on State and local general obligation bonds (i.e., $2,800 million of the $8,000 million projected revenue loss for FY 83); and none of the subsidy associated with the exclusion of interest paid on revenue bonds sponsored by State and local governments.

policies so as to enable them to qualify for tax-exempt status. [4]

Revenue Procedure 75-50, 1975-2 C.B. 587, sets forth guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies. A school's failure to comply with these guidelines ordinarily results in the proposed revocation of the tax-exempt status of the school.

Through provisions enacted as part of annual appropriations' legislation, the Congress has, at various times in the past, forbidden the Internal Revenue Service from developing or carrying out any rulings, procedures, or other provisions concerning tax exemptions for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978. [5]

The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the Supreme Court of the United States in the cases of Goldsboro Christian Schools, Inc. v. United States (No. 81-1), and Bob Jones University v. United States (No. 81-3). These cases have been argued before the court, but a decision has not yet been announced.

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[4] Rev. Rul. 71-447, 1971-2 C.B. 230 and Rev. Proc. 72-54, 1972-2 C.B. 834. These documents were issued in response to Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd per curiam sub nom. Coit v. Green, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemptions provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

[5] This prohibition originally was enacted in response to the fact that on August 21, 1978, the Internal Revenue Service proposed publication of a revenue procedure intended to revise administrative guidelines for determining whether a private school operates in a racially discriminatory manner. As a result of the reopening of litigation in Green v. Connally, supra, and Wright v. Miller, 480 F. Supp. 790 (D.D.C. 1979), rev'd sub nom. Wright v. Regan, 656 F.2d 820 (D.C. Cir. 1981), the IRS had concluded that its prior revenue procedures had not been effective in identifying schools that were racially discriminatory even though they had professed an open enrollment policy and had complied with requirements of Revenue Procedure 75-50.

II. DESCRIPTION OF S. 528

Credit for Tuition Expenses

Under the bill, an individual would be allowed to claim a nonrefundable tax credit for 50 percent of the tuition expenses paid during the taxable year to one or more educational institutions for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions.

Eligible Educational Institutions

The credit would be available only with respect to tuition paid to an institution which:

(1) provides a full-time program of elementary or secondary education;

(2) is a privately operated, not-for-profit, day or residential school; and

(3) is a section 501(c)(3) organization.

Maximum Credit Amount

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent would be:

(1) $100 in the case of tuition expenses paid or incurred after July 31, 1983, in taxable years beginning in 1983;

(2) $200 in the case of tuition expenses paid or incurred in taxable years beginning in 1984; and

(3) $300 in the case of tuition expenses paid or incurred in taxable years beginning in 1985 or later.

A special rule would provide that any tuition tax credits available to any taxpayer could not be taken into account in determining the estimated tax of a taxpayer for any taxable year beginning before January 1, 1984, or in determining the number of withholding exemptions to which any taxpayer would be entitled with respect to remuneration paid before January 1, 1984.

Adjusted Gross Income Phaseout

The maximum credit amount would be reduced by a specified percentage of the amount by which the taxpayer's adjusted gross income exceeds $40,000 ($20,000 in the case of a married individual filing a separate return). A taxpayer with adjusted gross income of $60,000 or more ($30,000 in the case of a married

individual filing separately) could not claim any credit.[6]

Disallowance of Credit with Respect to Amounts Paid to Racially Discriminatory Institutions

No tax credit would be permitted for tuition payments to schools that have racially discriminatory policies.

Under the bill, an educational institution would be considered to have a racially discriminatory policy if it refuses, on account of race (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs. A racially discriminatory policy would not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term "race" would include color or national origin.

A school would be required to file annually with the Internal Revenue Service a statement declaring that it had not followed a racially discriminatory policy and also would have to indicate whether the Attorney General has brought a declaratory judgment action against it during the current or any of the two preceding calendar years. The nondiscrimination statement would be furnished to each person who paid tuition to the school, and a taxpayer claiming the credit would have to attach a copy to his return.

Enforcement Proceedings

Under the bill, the Attorney General would be responsible for determining whether a school followed a racially discriminatory policy.[7]

The Attorney General would be authorized and directed to seek a declaratory judgment against a school after receiving a written allegation of discrimination filed by a complainant against the school and finding good cause. This written allegation would be required to allege with specificity that (1) the school had committed a racially discriminatory act against a student applicant or student within one year preceding the date on which the allegation was made, or (2) that the school had made a

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[6] Senator Grassley has introduced a bill, S. 1137, which is similar to S. 528, except that a taxpayer with adjusted gross income of $50,000 or more ($25,000 in the case of a married individual filing separately) could not claim any credit.

[7] The bill, as printed, contains a typographical error on page 6, line 7. The correct text of the bill, as introduced on February 17, 1983, appears on page S1336 of the Congressional Record for that day.

communication within one year preceding the date on which the allegation was made expressing that the school follows a racially discriminatory policy. Before commencing a declaratory judgment action, the Attorney General would be required to notify the school of the allegation against it and to give the school a fair opportunity to comment on those allegations.

If the Attorney General decided not to seek a declaratory judgment against the school, he would be required to make available to the complainant the information on which he based his decision, including any relevant information submitted by the school. He would not be required or authorized, however, to make available any information the disclosure of which would violate any Federal or State law protecting personal privacy or confidentiality.

Instead of seeking a declaratory judgment, the Attorney General could, in his discretion, enter into a settlement agreement with a school against which an allegation of discrimination had been made. However, before doing so, the Attorney General would be required to find that the school had been acting in good faith and had abandoned its racially discriminatory policy. A copy of any settlement agreement would be required to be furnished to the complainant whose allegations resulted in the Attorney General's investigation. If the school violated the settlement agreement, then no subsequent allegation would need to be filed before the Attorney General could initiate a declaratory judgment proceeding or commence a proceeding to enforce the terms of the settlement.

Attorney's Fees

The bill would authorize the district court to award costs and reasonable attorneys' fees to a school prevailing in a declaratory judgment proceeding brought by the Attorney General.

Discontinuance of Racially Discriminatory Policy

The bill provides that a school against which a declaratory judgment had been rendered could, at any time after one year from the date of the judgment, file with the district court a motion to modify the judgment to include a declaration that the school no longer followed a racially discriminatory policy. The motion by the school would be granted, and tuition paid to the school that is otherwise qualified would again become eligible for tax credits, unless the Attorney General established that the declaration by the school was false, or that the school had, within the preceding year, (1) committed a racially discriminatory act against a student or applicant, (2) communicated that it followed a discriminatory policy, or (3) engaged in a pattern of conduct to implement such a racially discriminatory policy.

Period of Disallowance of Tax Credits

No credits would be allowed for amounts paid to a school during the period in which a declaratory judgment against the school was in effect. Generally, a declaratory judgment would be effective beginning with the calendar year in which it was entered by the district court, whether or not it was appealed. The period of disallowance would end only if a motion to reinstate credits was granted by the district court. In that event, credits would again be allowed beginning with the year the motion was granted by the district court, whether or not that motion was appealed.

Annual Report by Attorney General

The bill would require the Attorney General to make an annual report to the Congress on his activities regarding enforcement of the anti-discrimination provisions.

Credit Not to be Considered as Federal Assistance

The bill provides that tuition tax credits would not constitute Federal financial assistance to educational institutions or the recipients thereof.

Effective Date

The bill generally would be effective for tuition payments made after July 31, 1983. However, no credits would be allowable until either a final decision of the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under Code section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

Revenue Effect

It is estimated that the bill would reduce budget receipts by $245 million in fiscal year 1984, $526 million in fiscal year 1985, $753 million in fiscal year 1986, $779 million in fiscal year 1987, and $763 million in fiscal year 1988. (Last year, a committee amendment to H.R. 1635 would have made the credit provided by that bill refundable. If S. 528 provided a refundable credit, then the bill would reduce fiscal year budget receipts by $253 million in 1984, $548 million in 1985, $786 million in 1986, $812 million in 1987, and $792 million in 1988.)

III. DIFFERENCES BETWEEN S. 528 AND H.R. 1635 (97TH CONGRESS)

There are three differences between S. 528 and H.R. 1635 (as reported by the Senate Committee on Finance in the 97th Congress).

Under H.R. 1635:

(1) Credit would not have been allowed for tuition paid to a school having an admissions policy that discriminated against handicapped children;

(2) Credit would not have been allowed for tuition paid to a school attendance at which does not satisfy State compulsory attendance laws; and

(3) No credit would have been allowed for taxpayers with adjusted gross incomes of $50,000 or more (rather than $60,000 or more). (S. 1137, introduced by Senator Grassley, contains this adjusted gross income phaseout. S. 1137 would reduce fiscal year budget receipts by $229 million in 1984, $491 million in 1985, $703 million in 1986, $716 million in 1987, and $723 million in 1988.)